IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.18930 of 2004
W.P.M.P.No.22731 of 2004

K. Selvaraj ... Petitioner

Vs.

1. The State Express Transport Corporation
(Tamil Nadu Div.-I) Ltd.,
Pallavan Salai,
Chennai - 600 002,
rep.by its Managing Director.

2. The General Manager (Administration),
The State Express Transport Corporation
(Tamil nadu Div.-I) Ltd.,
Pallavan Salai,
Chennai - 600 002. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the order in Ref.No.98/48363/TL9/SETC/02 dated 21.3.2003 from the file of the second respondent and the consequential order in Memo No.16/2579/TL9/2004 dated 16.2.2004 on the file of the first respondent and quash the same and consequently direct the respondents to treat the order of dismissal dated 21.3.2003 as discharge from service on medical grounds and to provide alternative employment to the petitioner in the post of helper or office assistant in pursuance of G.O.Ms.No.746 Transport Department, dated 2.7.1981 with all service benefits.

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For Petitioner : Mr.D.Saravanan

For Respondents : Mr.Rajnish Pathiyal

O R D E R

By consent of the learned counsel for the petitioner as well as respondents, the writ petition is taken up for final disposal.

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2. Prayer in the writ petition is to quash the order dated 21.3.2003 of the second respondent and the consequential order of the first respondent dated 16.2.2004 and to direct the respondents to provide alternate employment to the petitioner pursuant to G.O.Ms.No.746, Transport Department, dated 2.7.1981.

3. The brief facts necessary for disposal of the writ petition as stated in the affidavit are as follows.

(a) Petitioner was appointed as Conductor in the then Tiruvalluvar Transport Corporation from 9.10.1978 and he is having 25 years of unblemished record of service. On 8.12.2001 during the course of his employment, the bus in which the petitioner was travelling, met with an accident, due to which the petitioner sustained grievous injuries and the petitioner sustained crush injuries below his left knee including fracture of bones.

(b) The accident took place near Marthandam at 7.00 a.m. and at 8.00 a.m. M/s.Ramadoss and George, Checking Inspectors of the first respondent Corporation of Marthandam Depot visited the spot and obtained a statement from the petitioner. Petitioner was subsequently admitted in a private hospital at Marthandam and thereafter shifted to a private hospital, which is a speciality hospital for giving orthopeadic treatments.

(c) Petitioner applied for leave from 8.12.2001 and produced necessary medical certificates periodically before the Branch Manager, Tiruchirapalli, where the petitioner was lastly working. On 17.1.2002, the Branch Manager, Tiruchirapalli issued a charge memo and levelled five charges to the effect that without any prior permission, petitioner absented from 8.12.2001 and thereby violated the standing orders of the Corporation.

(d) Petitioner submitted his explanation on 6.2.2002 for which the Branch Manager on 20.3.2002 sent communication stating that though the petitioner gave prior intimation from 8.12.2001 and produced medical certificate for the period from 1.1.2002 to 31.3.2002, petitioner failed to produce the medical certificate for the period from 8.12.2001 to 31.12.2001. Petitioner produced the medical certificate for the said period also on 5.4.2002. The Branch Manager, after receipt of the said medical certificates directed the petitioner to appear before the Medical Board on 6.5.2002. The Medical Board ratified the period of medical leave from 1.1.2002 to 31.3.2002.

(e) Thereafter the Branch Manager issued another memo on 19.8.2002 and levelled charges against the petitioner stating that the petitioner unauthorisedly absented from 1.4.2002 and in spite of the directions of the Medical Board, Nagercoil, petitioner failed to report to duty. Petitioner submitted his explanation on 2.10.2002 and stated that he was under continuous treatment and requested the Branch Manager to depute anyone of the staff to verify and confirm the petitioner's health condition. Without considering the same, an enquiry was ordered. As the petitioner was unable to walk he could

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not attend the enquiry.

(f) Thereafter the Branch Manager deputed one security from Nagercoil depot, who found the petitioner's health condition and based on the same a report was submitted on 25.11.2002 confirming the petitioner's position that he is unable to walk. However, the Enquiry Officer conducted enquiry and held that the charges levelled against the petitioner are proved.

(g) The second respondent issued a show cause notice on 27.12.2002 and called upon the petitioner to explain as to why dismissal from service shall not be inflicted on him. Petitioner submitted his explanation on 10.1.2003 and reiterated the health condition and also submitted the medical certificates along with his application for leave. On 28.1.2003 first respondent directed the petitioner again to appear before the Medical Board and produce the medical certificate for the period from 8.12.2001 to 31.12.2001 and the period subsequent to 1.4.2002.

(h) On 8.2.2003, the Branch Manager sent a communication to the Medical Board for a medical check up and to submit a report as to (i) whether the petitioner is entitled to medical leave; (ii) whether the petitioner is fit to continue as conductor in the Corporation; (3) whether the leave period can be ratified; and (4) Whether the ailment is true ?

(i) The Principal of the Kanyakumari Government Medical College Hospital, Nagercoil, sent a communication on 8.3.2003 and directed the petitioner to appear before the Medical Board for medical check up at 10.00 a.m. on 13.3.2003. Petitioner appeared for medical examination and the Medical Board clearly gave opinion that the petitioner is suffering from Crush injury in his left foot and the petitioner is not fit to continue as conductor and recommended for invalidation on medical ground and also gave certificate ratifying the medical leave applied for the period from 1.4.2002 to 31.3.2003.

(j) After the receipt of the medical report of the Medical Board, the impugned order dated 21.3.2003 was issued dismissing the petitioner from service on the ground that the petitioner did not appear before the Medical Board. Petitioner preferred W.P.No.15366 of 2003 and the same was dismissed by this Court on 20.5.2003 on the ground that the petitioner has to avail the appeal remedy. Consequently petitioner preferred appeal before the first respondent which was dismissed on 16.2.2004 by a non-speaking order. The said order of dismissal is confirmed by the first respondent. The order of dismissal and the order passed in appeal are challenged in this writ petition.

(k) The grounds raised by the petitioner are that the Medical leave applied by the petitioner having been found genuine and ratified as per the report of the Medical Board, the charge memo issued alleging that the petitioner absented from 1.4.2002 is not maintainable as the petitioner applied for leave and the application was verified and found true by the Medical Board. The conduct of

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enquiry in spite of the condition of the petitioner that the he was unable to move as found by the security guard and the exparte finding are illegal. The non-consideration of the report of the Medical Board dated 13.3.2003 before imposing the punishment of dismissal is totally illegal. The petitioner having been found unfit to be a conductor by the Medical Board, is entitled to get alternate employment on medical ground. The order of the appellate authority being a non-speaking order is invalid.

4. Even though the respondents were served, no counter affidavit is filed contraverting the averments made by the petitioner.

5. The learned counsel for the petitioner submitted that the order of dismissal dated 21.3.2003 was passed based on the main charge that the petitioner absented without leave or intimation from 8.12.2001 is unsustainable in view of the fact that the petitioner sustained injury due to the accident while discharging his official duty and the same was verified by the Checking Inspectors of Marthandam Depot and the petitioner took treatment for his grievous injuries. Learned counsel further submitted that the petitioner applied for medical leave repeatedly and the Branch Manager, Tiruchirapalli depot through his communication dated 28.1.2003 directed to find out the genuineness of the medical certificate produced by the petitioner from 8.12.2001 to 31.12.2001 and from 1.4.2002 onwards. Again on 18.2.2003 petitioner was directed to appear before the Principal, Kanyakumari Government Medical College Hospital, Nagercoil to find out the genuineness of the claim made by the petitioner for the above period, pursuant to which also the petitioner appeared before the Medical Board on 13.3.2003 which found that the petitioner is not fit to continue as Conductor and the petitioner is recommended to be invalidated. The same was communicated by the Principal of the Medical College Hospital, Nagercoil, to the Branch Manager, State Express Transport Corporation Limited, Trichy in his proceedings L.Dis.No.981/02/2003 dated 13.3.2003. Learned counsel further submitted that the petitioner's absence was due to genuine reason, that is ill-health and therefore the respondents are not justified in dismissing the petitioner from service. The learned counsel further argued that instead of giving alternate appointment to the petitioner in terms of section 47 of the Persons with Disabilities (Protection and Full Participation) Act, 1995, the respondents have chosen to dismiss the petitioner from service and therefore the same has to be set aside and direction may be issued to give alternate appointment to the petitioner with all benefits.

6. The learned counsel for the respondents submits that admittedly the petitioner did not attend duty from 8.12.2001 and the leave sought by the petitioner was not sanctioned and that the petitioner also not attended for enquiry and even though the

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petitioner was not found fit to continue as conductor as per the medical report, petitioner having been terminated is not entitled to get alternate appointment.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents.

8. It is not in dispute that the accident occurred while the petitioner was on duty as conductor in the respondent Corporation Bus on 8.12.2001 and the petitioner sustained grievous injuries. Petitioner also produced medical certificates to prove that he was admitted in the hospital from 8.12.2001 to 31.12.2001 and the said certificate was issued by the Manju Nursing Home, Marthandam. Again for conducting treatment from 1.4.2002 till 30.4.2002, petitioner produced medical certificate from the Orthopeadic Speciality Hospital at Marthandam. Petitioner was advised to take rest as he was suffering from injury for two months from 1.6.2002 by the said speciality hospital, and again he was advised to take rest periodically by the speciality hospital. The genuineness of the petitioner's claim for sanction of the medical leave was directed to be verified by the respondent through communication dated 18.3.2003 and requested the petitioner to appear before the Medical Board, pursuant to which the Medical Board of the Government Medical College Hospital, Nagercoil, examined the petitioner on 13.3.2003 and ultimately by report dated 13.3.2003 found that the petitioner is suffering from crush injury in the left foot and not fit to continue as conductor and recommended for medical invalidation. The said certificate finds a place at page 37 of the typed set of papers and addressed to the Branch Manager of the State Express Transport Corporation Limited, Trichy. The leave sought for from 1.4.2002 to 13.3.2003 was also recommended to be ratified by the Dean of the Kanyakumari Government Medical College Hospital, through his certificate dated 13.3.2003. The same also finds a place in page No.38 of the typed set of papers.

9. In the light of the said certificates which were obtained at the instance of the respondent Corporation, the respondents are not justified in initiating disciplinary proceedings against the petitioner as if he has unauthorisedly absented from 8.12.2001. Petitioner is found not fit for the conductor post. Petitioner's service cannot be terminated on the ground of medical invalidation in view of the provisions contained in the Persons with Disabilities (Protection and Full Participation) Act, 1995.

10. A similar issue was considered by this Court in the decision reported in 2006 (1) CTC 124 (P.Thangamarimuthu v. Tamil Nadu State Transport Corporation Madurai) in respect of the Transport Corporation, Madurai Region. In the said case the Transport

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Corporation Conductor was found medically unfit as both his legs were amputated. In para 6 of the said judgment it is held as follows,

> "6. The main contention of the learned counsel for the respondent is that in view of the fact that both the legs are amputated, the definition under "locomotor disability" is not applicable to the petitioner. According to the learned counsel, "locomotor disability" means, disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. To bring a disability under the above definition, it must be only partial. Inasmuch as the petitioner has lost both the legs, it is a permanent disability and, therefore, such disability does not mean as locomotor disability. His further contention is that in the absence of applicability of the provisions, the petitioner is not entitled to the relief. In my opinion, the above submission is on total misreading of the provision. The definition must be read and understood keeping in mind the context of the object and reasons. The definition though relates to the disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy, in my opinion, when an employee has lost both the legs, it would amount to a disability as defined under sub-section (o) of Section 2 and thereby entitled to the benefit of Section 47 of the Act. In this context, the medical certificate issued by the Board on 30.12.2003 is also referable. In the certificate, it is specifically stated that the petitioner is considered as medically unfit to the job of conductor. As a necessary corollary, it shall mean that the petitioner would be otherwise fit for some other alternate and suitable post. In view of the above, I am unable to accept the contention of the petitioner that the disability sustained by the petitioner cannot be brought under Section 2(o) of the Act."

The learned single Judge in the said decision, taking note of the Judgment of the Honourable Supreme Court reported in (1994) 4 SCC 460 (Narendra Kumar Chandla v. State of Haryana and others), 2003 AIR SCW 1013 (Kunal Singh v. Union of India) and in the light of section 47 (1) of the said Act as well as the Division Bench decision of this Court reported in 2004 WLR 398 (Metropolitan Transport Corporation, rep.by its Managing Director, Division-I, Chennai v. The Presiding Officer, Principal Labour Court, Chennai and another) allowed the

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writ petition ordering re-employment to the petitioner therein in any alternate post with continuity of service with monetary benefit.

11. The facts in that case squarely applies to the facts in this case also as it is admitted in this case that the petitioner sustained injury during the course of the employment and he was found not fit to continue as conductor and the Medical Board also recommended for medical invalidation. The absence from 8.12.2001 having been found not unauthorised or wilful, the charge framed against the petitioner cannot be maintained. Consequently, the dismissal order passed after getting the medical report dated 13.3.2003 confirmed by the appellate authority is also unsustainable.

12. In the result, the impugned order of dismissal is set aside with a direction to the respondents to give alternate employment to the petitioner with backwages and continuity of service from 21.3.2003 within a period of four weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

vr/

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Managing Director,
   State Express Transport Corporation
   (Tamil Nadu Div.-I) Ltd., Pallavan Salai,
   Chennai - 600 002,

2. The General Manager (Administration),
   The State Express Transport Corporation
   (Tamil nadu Div.-I) Ltd.,
   Pallavan Salai, Chennai - 600 002.

1 CC TO M/S RAJNISH PATHIYIL, SR NO 6869

1 CC TO MR.D. SARAVANAN, ADVOCATE SR 6908

Order in

W.P.No.18930 of 2004

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